

MC88FEAP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

20 Cr. 218 (ALC)

5 DARNELL FEAGINS,

6 Defendant.

Plea

7 -----x
8 New York, N.Y.
9 December 8, 2022
10 12:10 p.m.

11 Before:

12 HON. VALERIE FIGUEREDO,

13 Magistrate Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

18 BY: CECILIA VOGEL

19 Assistant United States Attorney

20 ZMO LAW PLLC

21 Attorneys for Defendant

22 BY: TESS COHEN
23
24
25

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1 (In open court; case called)

2 THE DEPUTY CLERK: Government, can you make your
3 appearance for the record.

4 MS. VOGEL: Good afternoon. Cecilia Vogel for the
5 government. I just wanted to apologize for being late.

6 THE COURT: No worries. Good afternoon.

7 Sorry about the administrative stuff that held us up.

8 MS. COHEN: Good afternoon. Tess Cohen, ZMO Law, for
9 Mr. Feagins.

10 THE COURT: Good afternoon, Ms. Cohen.

11 Good afternoon, Mr. Feagins.

12 Mr. Feagins, are you able to speak and understand
13 English?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Feagins, I have before me a consent to
16 proceed before a United States magistrate judge on a felony
17 plea allocution that you have signed. What this form says is
18 that you have the right to have your plea taken by a United
19 States district judge, but you are agreeing to have the plea
20 taken by a United States magistrate judge, which is what I am.
21 As a magistrate judge, I have the authority to take your plea
22 with your consent, and you will be entitled to all of the same
23 rights and protections as if you were before a district judge.
24 Among other things, if you are found guilty, you will be
25 sentenced by a district judge.

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1 Did you sign the consent to proceed before a United
2 States magistrate judge voluntarily?

3 THE DEFENDANT: Yes.

4 THE COURT: Before you signed the form, did your
5 lawyer explain it to you?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you wish to proceed with your plea
8 before a United States magistrate judge?

9 THE DEFENDANT: Yes.

10 THE COURT: Your consent is accepted and I am signing
11 the form.

12 Mr. Feagins, the document that contains the charge to
13 which you have indicated you want to plead guilty to is called
14 an information and was issued by the United States attorney.

15 Under the United States Constitution, you have a right
16 to be charged by an indictment, which is issued by a grand
17 jury, instead of by an information like this one. A grand jury
18 is a group of 23 ordinary citizens that are called to jury
19 service to hear the government's evidence in criminal cases and
20 decide whether the evidence is sufficient to justify bringing
21 you to trial. In order to return an indictment, at least 12 of
22 the grand jurors must vote for the indictment, finding that
23 there is probable cause to believe that an offense was
24 committed and that you committed it.

25 You have a right to have the charges against you

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1 considered by a grand jury and to have the grand jury decide
2 whether to return an indictment. If you waive that right, that
3 is, if you give up your right to have the charges against you
4 presented to the grand jury, the case will proceed against you
5 based on the United States attorney's information, just as if
6 you had been indicted.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: I have a copy of your waiver of indictment
10 form that you signed.

11 Did you review this form with your attorney before you
12 signed it?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that by signing that
15 form, you are giving up your right to have your case presented
16 to a grand jury and you are agreeing to permit the charges to
17 be filed by the United States attorney instead?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you discussed with your attorney the
20 advantages and disadvantages of waiving indictment?

21 THE DEFENDANT: Yes.

22 THE COURT: Have any threats or promises been made,
23 other than the written plea agreement, between you and the
24 government to get you to waive indictment?

25 THE DEFENDANT: No.

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1 THE COURT: Do you wish to give up your right to be
2 charged by a grand jury?

3 THE DEFENDANT: Yes.

4 THE COURT: Ms. Cohen, have you reviewed the
5 information with your client?

6 MS. COHEN: Yes.

7 THE COURT: Do you waive a detailed reading of the
8 charges for purposes of arraignment?

9 MS. COHEN: Yes.

10 THE COURT: Do you wish to enter a plea on your
11 client's behalf to the information?

12 MS. COHEN: Yes.

13 THE COURT: What is that plea?

14 MS. COHEN: Plead guilty.

15 For the arraignment purposes -- I'm sorry. Not guilty
16 for these purposes.

17 THE COURT: So for purposes of the arraignment on the
18 information, a plea of not guilty will be entered on behalf of
19 Mr. Feagins, and the record will reflect that Mr. Feagins has
20 been arraigned on the information.

21 We are now going to move on to the plea portion of the
22 proceeding.

23 Mr. Feagins, I have been informed that you wish to
24 change your plea and to enter a plea of guilty as to Count One
25 of the information. Is that correct?

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1 THE DEFENDANT: Yes.

2 THE COURT: Before deciding whether to accept your
3 guilty plea, I am going to ask you certain questions. It is
4 very important that you answer these questions honestly and
5 completely. The purpose of these proceedings is to make sure
6 that you understand your rights, to decide whether you are
7 pleading guilty of your own free will, and to make sure that
8 you are pleading guilty because you are guilty and not for some
9 other reason.

10 Do you understand what I am saying?

11 THE DEFENDANT: Yes.

12 THE COURT: If you don't understand any of my
13 questions, or if you want at any time to consult with Ms.
14 Cohen, please say so, because it is important that you
15 understand every question before you answer.

16 Can you please raise your right hand, sir.

17 (Defendant sworn)

18 THE COURT: Do you understand that you are now under
19 oath, and that if you answer any of my questions falsely, you
20 may be prosecuted for perjury based on any false answers?

21 THE DEFENDANT: Yes.

22 THE COURT: Can you please -- you can lower your hand.
23 Can you please state your full name.

24 THE DEFENDANT: Darnell Feagins.

25 THE COURT: How old are you?

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1 THE DEFENDANT: 35.

2 THE COURT: Are you a United States citizen?

3 THE DEFENDANT: Yes.

4 THE COURT: How far did you go in school?

5 THE DEFENDANT: Tenth grade.

6 THE COURT: Can you read and write in English?

7 THE DEFENDANT: Yes.

8 THE COURT: Are you currently or have you recently
9 been under the care of a doctor, psychiatrist, or psychologist
10 for any reason?

11 THE DEFENDANT: No.

12 THE COURT: Do you have any condition that affects
13 your ability to see or hear?

14 THE DEFENDANT: No.

15 THE COURT: Any condition that affects your ability to
16 think, understand, or make judgments or decisions on your own
17 behalf?

18 THE DEFENDANT: No.

19 THE COURT: In the last 24 hours, have you taken any
20 drugs, medicine or pills that affect your mental processes or
21 consumed any alcohol?

22 THE DEFENDANT: No.

23 THE COURT: Is your mind clear today?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand what is happening in

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1 this proceeding?

2 THE DEFENDANT: Yes.

3 THE COURT: Does either counsel have any objections to
4 Mr. Feagins's competence to plead at this time?

5 MS. VOGEL: No, your Honor.

6 MS. COHEN: No, your Honor.

7 THE COURT: Mr. Feagins, have you received a copy of
8 the information that contains the charges against you?

9 THE DEFENDANT: Yes.

10 THE COURT: Have you read it?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you want me to read it to you?

13 THE DEFENDANT: No.

14 THE COURT: Do you understand what it says you did?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you had time to talk to your attorney
17 about these charges and how you wish to plead today?

18 THE DEFENDANT: Yes.

19 THE COURT: Has your attorney told you the
20 consequences of pleading guilty?

21 THE DEFENDANT: Yes.

22 THE COURT: Are you satisfied with your attorney's
23 representation?

24 THE DEFENDANT: Yes.

25 THE COURT: I am now going to explain certain

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1 constitutional rights that you have. These are rights that you
2 will be giving up if you enter a guilty plea. Please listen
3 carefully to what I am about to say and if you do not
4 understand something, stop me, and your attorney or I will
5 explain the issue more fully.

6 Under the Constitution and the laws of the United
7 States, you have a right to plead not guilty to the charges
8 contained in this information.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: And if you plead not guilty, you would be
12 entitled under the Constitution to a speedy and public trial by
13 a jury of those charges.

14 At that trial, you would be presumed innocent and the
15 government would be required to prove you guilty beyond a
16 reasonable doubt before you could be found guilty. And you
17 could not be convicted unless a jury of 12 people agreed
18 unanimously that you were guilty beyond a reasonable doubt.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: If you decided to go to trial, at that
22 trial, and at every stage of your case, you would have the
23 right to be represented by an attorney, and if you could not
24 afford one, an attorney would be appointed to represent you at
25 the government's expense. Even if you retained private defense

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1 counsel, if you ran out of money, an attorney would be
2 appointed to continue to represent you. You would be entitled
3 to an attorney all the way through trial and not just for the
4 guilty plea. So your decision to plead guilty should not
5 depend on whether you can afford to hire an attorney.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: During a trial, the witnesses for the
9 prosecution would have to come to court and testify in your
10 presence, where you could see and hear them, and your lawyer
11 could cross-examine those witnesses. And if you wanted, your
12 lawyer could offer evidence on your behalf. You would be able
13 to use the court's power to compel witnesses to come to court
14 to testify, even if they did not want to come.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: At a trial, you would have the right to
18 testify in your own defense, if you wanted to, but you would
19 also have the right not to testify, and if you chose not to
20 testify, that could not be used against you in any way. No
21 inference or suggestion of guilt would be permitted from the
22 fact that you did not testify.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: If you were convicted at trial, you would

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1 have the right to appeal that verdict to a higher court.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: As I said before, you have the right to
5 plead not guilty. Even right now, even as you sit here today
6 for the purposes of entering a guilty plea, you have the right
7 to change your mind, persist in your not guilty plea and go to
8 trial. But if you do plead guilty, and if the Court accepts
9 your plea, you will give up the right to a trial and all the
10 other rights that go with it that I have just described. If
11 you plead guilty, there will be no trial. All that will remain
12 to be done will be to impose a sentence. You and the
13 government will have a chance to make arguments about what
14 sentence you should receive, but there will not be any further
15 trial to determine whether you are guilty or not guilty of the
16 charges to which you pled guilty.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that the decision as to
20 the appropriate sentence in your case will be entirely up to
21 the sentencing judge, and that the judge will be limited only
22 by what the law requires? This means that even if you are
23 surprised or disappointed by your sentence, you will still be
24 bound by your guilty plea.

25 Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: Finally, if you do plead guilty, you are
3 also giving up the right not to incriminate yourself, and I
4 will ask you questions about what you did in order to satisfy
5 myself that you are actually guilty. By pleading guilty, you
6 will be admitting your factual as well as your legal guilt.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Count One of the information charges that
10 you possessed child pornography, in violation of Title 18,
11 United States Code, Section 2252A.

12 I am going to ask Ms. Vogel to state the elements of
13 that charge. The elements, Mr. Feagins, are the things that
14 the government would have to prove beyond a reasonable doubt if
15 you went to trial.

16 MS. VOGEL: Yes, your Honor.

17 First, the government would have to prove that the
18 defendant knowingly possessed any matter that contained an
19 image of child pornography;

20 Second, that such child pornography had been
21 transported at some point in interstate or foreign commerce by
22 any means, including by computer, or that such child
23 pornography had been possessed and using materials that had
24 themselves at some point been mailed or shipped or transported
25 in interstate or foreign commerce by any means, including by a

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1 computer;

2 Third, that the defendant knew that such items
3 constituted child pornography; and

4 Fourth, that the defendant had a prior conviction
5 relating to aggravated sexual abuse, sexual abuse, or abuse of
6 sexual conduct involving a minor.

7 And that fourth element applies in this case given
8 that Mr. Feagins is charged with an offense that carries a
9 mandatory minimum.

10 In addition, the government would also have to prove
11 by a preponderance of the evidence that venue is proper in the
12 Southern District of New York.

13 THE COURT: Thank you.

14 Mr. Feagins, I am going to tell you the maximum
15 possible penalty for that crime. The maximum means the most
16 that could possibly be imposed. It does not mean that is what
17 you will necessarily receive, but by pleading guilty you are
18 exposing yourself to the possibility of receiving any
19 combination of punishments up to the maximum that I am about to
20 describe.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: The maximum term of imprisonment for the
24 crime charged in Count One is 20 years, which could be followed
25 by up to a maximum term of supervised release of life. If your

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1 sentence includes supervised release, you will be subject to
2 supervision by the probation department after you are released
3 from prison. If you violate any condition of that supervised
4 release, the Court can revoke the term of supervised release
5 previously imposed and return you to prison without giving you
6 any credit for time previously served on post-release
7 supervision.

8 Count One of the information also carries a mandatory
9 minimum sentence of ten years in prison. A mandatory minimum
10 sentence means that the sentencing judge cannot sentence you to
11 less than that. It also carries a mandatory minimum term of
12 supervised release of five years.

13 In addition to these restrictions on your liberty, the
14 maximum possible punishment for the crime charged in Count One
15 also includes financial penalties.

16 The maximum allowable fine is \$250,000, or twice the
17 profits of the criminal activity, or twice what someone other
18 than yourself lost because of the criminal activity, whichever
19 is greater.

20 You can also be required to pay restitution to any
21 victims of the crime in an amount that the Court decides is
22 required to compensate them for any injuries.

23 And in addition, by pleading guilty, you will admit to
24 the forfeiture allegations in the information and agree to
25 forfeit any property within the scope of Title 18, United

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1 States Code, 2253.

2 I am also required by law to tell you that there is an
3 additional special assessment, or fine, of \$100 that is
4 required to be imposed on each count of conviction, plus an
5 additional assessment of \$5,000 pursuant to 18, United States
6 Code, 3014.

7 Mr. Feagins, you told me a few minutes ago that you
8 are a United States citizen. The reason I asked that question
9 was that if you were not a citizen, your guilty plea would
10 likely have adverse consequences for your ability to remain in
11 or return to the United States, including removal, deportation,
12 denial of citizenship, and denial of admission to the United
13 States in the future. Your removal or deportation could be
14 mandatory, and if that did happen, you would still be bound by
15 your guilty plea. You would not be able to withdraw it
16 regardless of any advice you received from your counsel or
17 others regarding the immigration consequences of your plea.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Has anyone threatened or coerced you in
21 any way in an effort to get you to plead guilty?

22 THE DEFENDANT: No.

23 THE COURT: I understand that there is a written plea
24 agreement between you and the government. It is contained in a
25 letter dated December 5, 2022, addressed to your attorney,

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1 which appears to have your signature on the last page.

2 Did you sign the plea agreement?

3 THE DEFENDANT: Yes.

4 THE COURT: Did you read it before you signed it?

5 THE DEFENDANT: Yes.

6 THE COURT: Did you discuss it with your attorney?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand its terms?

9 THE DEFENDANT: Yes.

10 THE COURT: Has anyone promised you or offered you
11 anything in order to get you to plead guilty other than what is
12 in the agreement?

13 THE DEFENDANT: No.

14 THE COURT: Mr. Feagins, do you understand that in
15 this agreement, you have limited your right to appeal from any
16 sentence that may be imposed? Specifically, do you understand
17 that as long as Judge Carter sentences you to a prison term of
18 no longer than 162 months, any lawful sentence of supervised
19 release, a fine of no greater than \$250,000, and a special
20 assessment that is not greater than \$5100, you are giving up
21 your right to challenge your sentence, whether by direct
22 appeal, writ of habeas corpus, or otherwise?

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that under the terms of

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1 this plea agreement, even if you later learn that the
2 government withheld from your counsel certain information that
3 would have been helpful to you in defending yourself at trial,
4 other than information establishing your factual innocence, you
5 will not be able to complain about that or withdraw your guilty
6 plea on that basis?

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that the terms of this
10 plea agreement, including any calculations related to
11 sentencing, are not binding on the sentencing judge?

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: The sentencing judge may reject those
15 calculations and could impose a more severe sentence than you
16 expect without permitting you to withdraw your plea of guilty.

17 The sentencing judge is required to make his own
18 independent calculation of the appropriate sentencing range
19 under the sentencing guidelines, and will also have the
20 discretion to give you a sentence below or above that range, up
21 to the maximum sentence that I told you about earlier.

22 In addition to the guidelines and possible departures
23 from those guidelines, the sentencing judge will also consider
24 the factors set forth in 18, United States Code, Section
25 3553(a).

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1 In other words, the sentencing judge will pronounce
2 whatever sentence he believes is the appropriate sentence for
3 you, even if that sentence is different from the one set forth
4 in the plea agreement.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: The court will also consider a presentence
8 report prepared by the probation department in advance of your
9 sentencing. Before you are sentenced, you and the government
10 will have an opportunity to challenge the facts reported by the
11 probation officer.

12 Do you understand that there is no parole in the
13 federal system?

14 THE DEFENDANT: Yes.

15 THE COURT: That means that if you are sentenced to
16 prison, you will not be released on parole.

17 Before I go on, I am going to ask either counsel if
18 there is any provision of the plea agreement that they would
19 like me to go over with Mr. Feagins.

20 MS. VOGEL: Not from the government. Thank you.

21 MS. COHEN: No, your Honor.

22 THE COURT: Mr. Feagins, aside from what is in the
23 plea agreement itself, have any promises been made to you to
24 influence you to plead guilty?

25 THE DEFENDANT: No.

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1 THE COURT: Have any promises been made to you
2 concerning the actual sentence you will receive?

3 THE DEFENDANT: No.

4 THE COURT: Now that you have been advised of the
5 charge against you, the possible penalties you face, and the
6 rights you are giving up, is it still your intention to plead
7 guilty to Count One of the information?

8 THE DEFENDANT: Yes.

9 THE COURT: Is your plea voluntary and made of your
10 own free will?

11 THE DEFENDANT: Yes.

12 THE COURT: Mr. Feagins, with respect to Count One,
13 how do you plead, guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: Can you tell me in your own words what you
16 did that makes you guilty of that crime?

17 THE DEFENDANT: I possessed illegal child pornography
18 on my phone between November 2017 to October 2020.

19 THE COURT: I just want to ask you a few questions,
20 Mr. Feagins.

21 The statement you read from, did your attorney help
22 you prepare it?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you adopt those words as your own?

25 THE DEFENDANT: Yes.

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1 THE COURT: Is everything you said true?

2 THE DEFENDANT: Yes.

3 THE COURT: I just want to confirm that I heard you
4 correctly. You had indicated that you possessed the child
5 pornography images on your phone?

6 THE DEFENDANT: Yes.

7 THE COURT: And you knew at the time that you
8 possessed them that it was unlawful to possess those images?

9 THE DEFENDANT: Yes.

10 THE COURT: I am going to ask the government if you
11 believe that there is a sufficient factual predicate for a
12 guilty plea.

13 MS. VOGEL: Yes, your Honor. I can also just proffer
14 some brief information.

15 The defendant, at least at times, possessed these
16 phones with child pornography while located in the Bronx.

17 In addition, the cell phones were manufactured outside
18 of New York State, which under the law satisfies the interstate
19 commerce requirement.

20 And in addition, the defendant was previously
21 convicted of a criminal sexual act in the second degree, a
22 class D felony, under New York law, in New York supreme court,
23 in Kings County.

24 THE COURT: Does the government represent that it has
25 sufficient evidence to establish guilt beyond a reasonable

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1 doubt at trial?

2 MS. VOGEL: Yes, your Honor. I can summarize what the
3 evidence is, if you would like.

4 THE COURT: Please.

5 MS. VOGEL: The evidence at trial would include law
6 enforcement testimony regarding both the seizures of the phones
7 as well as expert testimony from a computer forensic expert
8 regarding what was found on the phones, the child pornography
9 images themselves that were recovered from the cell phones, the
10 defendant's post-arrest statement, as well as certified court
11 records of the defendant's prior conviction.

12 THE COURT: Thank you.

13 Mr. Feagins, on the basis of your responses to my
14 questions and my observations of your demeanor, I find that you
15 are competent to enter a guilty plea. I am satisfied that you
16 understand your rights, including your right to have your case
17 considered by a grand jury, and your right to go to trial, that
18 you are aware of the consequences of your plea, including the
19 sentence that may be imposed, that you are voluntarily pleading
20 guilty, and that you have admitted that you are guilty as
21 charged in Count One of the information. For these reasons, I
22 will recommend that Judge Carter accept your plea.

23 Ms. Vogel, I assume that the government will order a
24 copy of the transcript and submit it to Judge Carter.

25 MS. VOGEL: Yes, your Honor. And Judge Carter has

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1 scheduled sentencing for March 9 at 2 p.m.

2 THE COURT: I will direct that the presentence report
3 be prepared.

4 Ms. Vogel, can you deliver the case summary for
5 purposes of the presentence report within 14 days?

6 MS. VOGEL: Yes.

7 THE COURT: Ms. Cohen, will you be available to be
8 interviewed by the probation department with Mr. Feagins within
9 14 days?

10 MS. COHEN: Yes. It will likely be
11 Mr. Margulis-Ohnuma who will be present with him.

12 THE COURT: Is there anything further from either
13 side?

14 MS. VOGEL: Not from the government. Thank you.

15 MS. COHEN: No, your Honor. Thank you.

16 THE COURT: Thank you so much.

17 Thank you, Mr. Feagins.

18 (Adjourned)